

SENATE BILL 2177

By Cooper

AN ACT to amend Tennessee Code Annotated, Title 65, Chapter 4, by adding a new part relative to the regulation of access by telecommunications carriers to commercial buildings; to specify the duties and protect the rights of telecommunications carriers, owners of commercial buildings and telecommunications users; to provide procedures for determining just compensation and for the determination of other matters arising from the interpretation and application of the new part; to provide for the award of damages; to confer exclusive jurisdiction on the Tennessee regulatory authority; and to authorize the adoption of rules by the Tennessee regulatory authority.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 65, Chapter 4, is amended by adding the Sections 2 through 17 of this act as a new part:

SECTION 2. As used in this part, unless the context otherwise requires:

(1) "Access" means the right to use poles, pole attachments, ducts, conduit, entrance facilities, equipment rooms, vaults, telephone closets and other pathways for the provision of telecommunications services.

(2) "Authority" means the Tennessee regulatory authority.

(3) "Commercial Building" means a building or group of buildings rented or designed to be rented or occupied as two (2) or more separate residential units; or as the place of business of two or more businesses operating independently of each other; or by any combination of such residential units and such businesses; and includes office parks, apartment complexes, residential subdivisions, trailer parks, mobile home parks,

condominiums, and any other property designed for the separate occupancy by three or more residential units or separate businesses.

(4) "Owner" means any landlord, condominium developer or association, or any other person controlling access by telecommunications carriers to any commercial building.

(5) "Telecommunications Carrier" means any telecommunications service provider as defined in Section 65-4-101, competing telecommunications service provider as defined in Section 65-4-101, and telephone cooperative organized and operating pursuant to Title 65, Chapter 29.

(6) "Telecommunications User" means, with respect to any commercial building, any tenant, owner of a condominium unit, owner of any business located therein, and lessee of any residential unit located therein, desiring to use or using the telecommunications services of a telecommunications carrier.

SECTION 3. In order to assure the rights of telecommunications users to access the telecommunications services of telecommunications carriers, and to foster the development of competition in the provision of telecommunications services, telecommunications carriers shall have the right to locate and lay their lines and construct, operate and maintain their facilities, necessary to provide telecommunications services, to telecommunications users, in any commercial building, subject to the conditions and limitations provided in this part or in any order or rule of the authority adopted pursuant to this part.

SECTION 4. Subject to the conditions and limitations provided in this part, or any rules or orders of the authority, owners of commercial buildings may consent to access by any telecommunications carrier to any commercial building, or such owners and any such telecommunications carrier may agree or contract with respect to such access.

SECTION 5. No telecommunications carrier has the power to contract with the owner of any commercial building to locate and lay its lines or construct, operate and maintain its facilities, to the exclusion of other telecommunications carriers.

SECTION 6. Subject to the conditions and limitations of this part and of any rules or orders of the authority;

(1) Owners of commercial buildings shall provide access to telecommunications users in such buildings on an equivalent, competitively neutral and nondiscriminatory basis. If an owner provides access to one telecommunications carrier without charge, then such owner may not impose charges on other telecommunications carriers for access to such building.

(2) Owners of commercial buildings may require telecommunications carriers seeking access where another telecommunications carrier already has such access, to utilize first the access facilities already in place before seeking additional access. Telecommunications carriers having such access in place shall provide access to any other telecommunications carrier on an equivalent, competitively neutral and nondiscriminatory basis.

(3) Access may be denied, on a competitively neutral and nondiscriminatory basis, where there is insufficient capacity and for reasons of safety, reliability and pursuant to generally applicable engineering standards. In the event that access is denied the building owner shall permit the requesting telecommunications provider(s) to inspect the occupied building to verify the building owner's declaration and to inspect for additional space for the placement of such equipment.

Such inspection shall be by the employ and use of an independent third party the expenses and costs of which shall be divided equally between the building owner and the requesting telecommunications provider(s). If the independent inspection verifies the building owner's declaration that there is no further space in the telephone closet or designated area, any placement of additional equipment shall be subject to negotiation between the building owner and requesting telecommunications provider(s). Such negotiation may include terms of cost-based rent but shall not, in any case result in an agreement that violates any rule or

decision of the authority or this section. If the independent inspection reveals that the telephone closet or designated area contains obsolete telecommunications equipment, the owner of such equipment shall remove or replace, at its own cost, such obsolete equipment to ensure the provision of upgraded and advanced telecommunications services to occupants of the occupied building.

SECTION 7. Owners of commercial buildings shall not base any charges, or other terms and conditions of occupancy, as to any telecommunications user in such commercial buildings on whether such telecommunications user is a subscriber of the services of any telecommunications carrier, or otherwise discriminate against such telecommunications users on the basis of a choice of telecommunications carrier.

SECTION 8. In exercising its right of access, a telecommunications carrier shall not unreasonably interfere with the ongoing operations of the commercial building or with the facilities or services of another telecommunications carrier or other user of access to such commercial building.

SECTION 9. If an owner of a commercial building, or another telecommunications carrier, or other prior user of access to that building, is required to incur out-of-pocket costs in order to accommodate the right of access of a telecommunications carrier, that telecommunications carrier shall make reimbursement for such out-of-pocket costs that are just and reasonable.

SECTION 10.

(a) Owners of commercial buildings are entitled to just and reasonable compensation for providing access to such commercial buildings, in addition to reimbursement for any incurred out-of-pocket costs.

(b) Just and reasonable compensation due such owners shall be based on consideration of the following:

(1) Evidence that the owner has a specific alternative use for any space that would be occupied by the telecommunications carrier, the loss of which space will result in a specific quantifiable loss to the owner;

(2) Evidence as to the value of the property of the owner before, or without, the installation of the facilities of the telecommunications carrier and the value after, or with, the installation of such facilities; and

(3) Any other evidence showing either a diminution or an enhancement of the value of the property of the owner by reason of the installation of the facilities of the telecommunications carrier.

SECTION 11.

(a) If the access facilities of a telecommunications carrier are used by another telecommunications carrier in providing access to telecommunications users in any commercial building, the telecommunications carrier providing access to the other telecommunications carrier shall be entitled to just and reasonable compensation for providing such access, in addition to reimbursement for any out-of-pocket cost incurred.

(b) Just and reasonable compensation for such a telecommunications carrier shall be based on consideration of the following:

(1) Evidence that the telecommunications carrier has a specific alternative use for any space or capacity that would be occupied by such other telecommunications carrier, the loss of which space will result in a specific, quantifiable loss to the telecommunications carrier.

(2) Evidence as to the proportionate cost of the space or capacity provided to the telecommunications carrier seeking access compared to the total cost to the telecommunications carrier furnishing access to such space or capacity.

SECTION 12. Neither owners of commercial buildings, nor prior telecommunications carriers furnishing access, shall have the right to deny access to a telecommunications carrier for

service to a telecommunications user on the grounds that no agreement had been reached as to compensation for such access or that compensation has not been paid. Access shall be provided pending the determination of just and reasonable compensation. Access may be denied, however, on a showing that the telecommunications carrier seeking access is unable to pay such compensation and fails or refuses to post a bond to assure such payment. The right to access may be revoked by order of the authority on the failure of a telecommunications carrier to pay compensation as ordered by the authority, or as provided in any agreement or contract.

SECTION 13. Any telecommunications carrier or telecommunications user who has been damaged by the actions of an owner of a commercial building, or another telecommunications carrier, in violation of the provisions of this part ,shall be entitled to recover such damages by filing a petition with the authority for the determination and award thereof.

SECTION 14. The authority shall have exclusive jurisdiction to resolve and determine issues as to the compensation due from telecommunications carriers to owners of commercial buildings or to other telecommunications carriers for the provision of access; and exclusive jurisdiction to resolve and determine issues as to unreasonable interference, or damages, or as to any other issues involving the interpretation and application of this part, subject to the right of any party to petition for the judicial review of decisions of the authority.

SECTION 15.

(a) If a telecommunications carrier and an owner of a commercial building, or a telecommunications carrier and another telecommunications carrier, have been unable to negotiate issues arising from this part within sixty (60) days after the commencement of such negotiations, any such telecommunications carrier or owner may file a petition for a determination of such unresolved issues with the authority. On the filing of such a petition, the authority shall convene a contested case pursuant to the statutes governing procedures before the authority and the procedural rules of the authority. Further proceedings shall be

governed as in any other contested case, including the right to file a petition for review pursuant to § 4-5-322.

(b) Any telecommunications user in a commercial building aggrieved by any action of a building owner or a telecommunications carrier with respect to the interpretation or application of any provision of this part may file a petition with the authority seeking relief. On the filing of such a petition, the authority shall convene a contested case pursuant to the statutes governing procedures before the authority and the procedural rules of the authority. Further proceedings shall be governed as in any other contested case, including the right to file a petition for review pursuant to § 4-5-322.

(c) The authority has general jurisdiction for the enforcement of the provisions of this part, and in order to assure compliance with this part, may institute investigations as to such compliance in accordance with the general investigatory powers of the authority, and on the basis of such investigation, may issue show- cause orders pursuant to § 65-2-106.

SECTION 16. If any order of the authority awarding damages, awarding compensation or ordering other relief is not satisfied or obeyed, the party entitled to such award or other relief may file an action in the Chancery Court of Davidson County for the enforcement thereof.

SECTION 17. The authority shall adopt rules in accordance with the Uniform Administrative Procedures Act, Title 4, Chapter 5 governing the procedures to be followed under this part, and implementing, interpreting and making specific the application of this part. However, the application and enforcement of any provision of this part is not dependent on the prior adoption of such rules.

SECTION 18. The provisions of this act are declared to be remedial in nature and all provisions of this act shall be liberally construed to effectuate its purpose.

SECTION 19. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the

act which can be given effect without the invalid provision or application, and to that end, the provisions of this act are declared to be severable.

SECTION 20. This act shall take effect upon becoming a law, the public welfare requiring it.